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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/590,574

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Stephen Gilbert

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05/01/2009

MARSHALL, GERSTEIN & BORUN LLP (FISHER)

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EXAMINER

HARTMAN JR, RONALD D

ART UNIT

PAPER NUMBER

2121

MAIL DATE

DELIVERY MODE

05/01/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/590,574

Applicant(s)

GILBERT ET AL.

Examiner

RONALD D. HARTMAN JR

Art Unit

2121

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 and 38-58 is/are pending in the application.
- 4a) Of the above claim(s) 47-58 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 and 38-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 47-58 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date 4/3/2009.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application.
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed on 1/7/2009 have been fully considered but they are not persuasive for the following reasons:

The applicant asserts that Yuen does not disclose "a display object that includes multiple graphic visualizations for a process entity" (e.g. See Page 13 of the Remarks filed on 1/7/2009). The applicant then goes on to say, "In any case, none of the discussions in the Yuen publication, discloses a display object associated with a process entity that includes multiple graphic visualizations for that same process entity." (e.g. See page 14 of Remarks). This appears to be the applicant's only contention with the rejection formed using the Yuen et al. publication.

In response, the examiner must respectfully disagree. Due to the applicant's overwhelmingly broad claim construction, the examiner believes that Yuen does in fact disclose more than one visualization for the same process entity. Applicant's attention is directed to Figure 6 which graphically depicts "CONVEYOR 1" as a textual folder in the system equipment hierarchy pane. Further, "CONVEYOR 1" is also graphically depicted as a compound object using rung ladder logic, in the pane listed as element 210. In addition, this very same entity is also graphically shown as yet another symbol in Figure 8, element 660. Therefore, it can be clearly seen that there are at least three graphical depictions, or visualizations, of the process entity of "CONVEYOR 1".

Therefore, since the examiner has refuted the applicant's only contention with respect to the outstanding Non Final office action, mailed on 10/7/2008, the rejections are once again applied herein and this action is made Final.

Election/Restrictions

Newly submitted claims 47-58 (invention II) are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Inventions I (previously presented claims 1-21 and 38-46) and II are related as subcombinations disclosed as usable together in a single combination. The

subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination I has separate utility such as in a system that does not require the specific technical features required by invention II, specifically an edit canvas feature, a library feature, an editor module feature, etc. See MPEP § 806.05(d).

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 47-58 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102 (maintained)

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-21 and 38-46 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Yuen et al., U.S. Patent Application Publication No. 2003/0033037 (e.g. See Figures 1-6 and 8 as well as their corresponding textual descriptions).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **RONALD D. HARTMAN JR** whose telephone number is (571)272-3684. The examiner can normally be reached on Mon.-Fri., 11:00 - 8:30 pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Albert Decady can be reached on (571) 272-3819. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ronald D Hartman Jr./

Examiner, Art Unit 2121

April 25, 2009

RDH